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Federal Communications Commission
Washington, D. C. 20554

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In the matter of

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Computer III Further Remand Proceedings:)	CC Docket No. 95-20
Bell Operating Company)	
Provision of Enhanced Services)	
)	
1998 Biennial Regulatory Review--)	CC Docket No. 98-10
Review of Computer III and ONA)	
Safeguards and Requirements)	

**COMMENTS OF METRO ONE TELECOMMUNICATIONS, INC.
CONCERNING THE COMMISSION'S PROPOSED STREAMLINED
REQUIREMENTS FOR BOC PROVISION OF INFORMATION
SERVICES**

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COMMENTS OF METRO ONE TELECOMMUNICATIONS INC.

Pursuant to the Commission's Further Notice of Proposed Rulemaking, Metro One Telecommunications, Inc. (Metro One) offers the following comments on streamlining the requirements for BOC provision of information services

I. INTRODUCTION

Metro One is a national provider of enhanced information and telecommunications services. Among other things, these services currently include the provision of Enhanced Directory Assistance service to various national and regional cellular and PCS telephone companies. Metro One also makes their service available to landline based carriers. Metro One is headquartered in Beaverton, OR, and has 16 directory assistance call centers located throughout the U. S. One or more of these directory assistance call centers are located in each of the RBOC operating areas. Metro One's primary requirement for interconnection with BOCs is gaining access to the directory assistance listings of the BOCs, nondiscriminatorily, in readily accessible electronic tape formats and at rates provided for in the Telecommunications Act of 1996 (Act).

II. SUMMARY

Metro One believes that for the same reasons the Commission rules currently differentiate between basic and enhanced service, the Commission's rules should now distinguish between telecommunications and information services, at least as far as the BOCs are concerned.

Metro One also believes that the Commission's *Computer II* decision should now be interpreted to require facilities-based common carriers that provide information services to unbundle their telecommunications services and offer such services to other Information Service Providers (ISPs) under the same terms and conditions under which they provide such services to their own information services operations.

It is in the public interest for the Commission to extend section 251-type unbundling to pure ISPs and pursuant to the Commission's general rulemaking authority contained in sections 201-205 of the Act, and as exercised in the *Computer III*, *ONA*, and *Expanded Interconnection* proceedings, the Commission can and should extend all rights accorded by Section 251 to requesting telecommunications carriers to pure ISPs.

Metro One does not agree with the Commission that pure ISP in general, and directory assistance providers specifically, have realistic alternative options to obtain the benefits of sections 251 unbundling. The BOCs are very creative in finding ways to stall or making sure their unbundled network element of directory assistance listings do not become available to competitive directory assistance providers under terms and conditions which allows the competitive providers be effective competitors. The only realistic prospect ISPs have of getting section 251-type unbundling is through Commission rules and action such as the present proceeding.

The extension of section 251-type unbundling, at least to ISPs such as competitive directory assistance providers, would not be inconsistent with section 251, which by its terms applies only to telecommunications carriers. As a matter of fact it would be totally consistent with 251 and the remainder of the Act.

The approach provided for in the Act relative to the unbundled network element of directory assistance listings is new and should be considered an addition to the provisions of ONA. To the extent it conflicts with ONA, it should supersede ONA.

If section 251-type unbundling benefits are extended to enhanced directory assistance providers, any obligations under section 251 or Title II provisions, to the extent they are applicable to the situation, could be extended to the competitive ISPs.

Metro One believes that if they are extended the unbundling benefits of section 251, the provisions of section 251 and the remainder of the Act, properly implemented, can satisfy their needs and as a result it has no need for ONA.

III. BACKGROUND

As an enhanced information services provider, Metro One must have easy and cost effective access to the directory assistance listing information of all BOCs in order to provide fast, accurate, timely and useful directory assistance information to its customers. Key to being able to provide the level of service that Metro One is committed to providing it's customers, and to providing service that is superior to that provided by the BOCs or any other provider, is being able to acquire the directory assistance listings of the BOCs in batch formats via magnetic tape or some other electronic media.

Metro One's objective is to acquire the basic name, address, and telephone number of the BOC telephone subscribers as contained in the BOC directory assistance record, in batch format, so they can enhance it with other data valuable to enhanced directory assistance users. Metro One can then use its more powerful and efficient search to more effectively retrieve the information that the customer is requesting. Examples of the enhanced data are business category, geographic information for providing directions,

business data specific to each business such as hours of operation, credit cards accepted, products or services offered. It is not technically feasible to be able to provide this data unless Metro One is able to acquire the BOC directory assistance database and build it's own enhanced database which it's proprietary search engine can then efficiently access to retrieve the information the caller has requested.

The practical result of not being able to obtain BOC directory assistance data in batch format is that when a Metro One caller requests a directory assistance listing that is in the BOC directory assistance database, the search has to go through the Metro One search engine, through the interface with the BOC system and then through the BOC search engine. After the listing is found, if it is found, it then has to go through the reverse path. If it is not found, then the process has to be repeated with different search parameters. The impact on Metro One is less effective search capabilities and inability to enhance data resulting in a degraded search capability rather than enhanced capability.

Metro One has been unable to obtain directory assistance listings in batch format from Bell Atlantic. In addition, Southern New England Telephone and Cincinnati Bell have refused to allow any access to their directory assistance listings.

Bell Atlantic has advised Metro One that they will provide batch access to their directory assistance listings only to CLECs that have petitioned for and won arbitrations on a state by state basis in each of the states in the Bell Atlantic operating area. For any competitive directory assistance provider that is not a telecommunications carrier, Bell Atlantic requires that any access be on-line through one of their two, totally different, and mutually incompatible directory assistance search engines.

This service is clearly inferior to the service Bell Atlantic provides to its own directory assistance operations.

Another factor critical to the success of competitive directory assistance providers is their ability to acquire the data at a reasonable price. The Act, the First Report and Order, the Second Report and Order, and the decision of the Circuit Court of appeals for the Eighth Circuit all agree and make it very clear what the BOCs may charge for their directory assistance listings. The Eighth Circuit, in their opinion, stated that:

“We recognize that the Act requires interconnection and network element charges to be based on cost, but we note that the Act indicates that these rates ‘may include a reasonable profit’ for the incumbent BOCs.”

Metro One believes that the rates being charged by Bell Atlantic, Southwestern Bell, Pacific Bell, U S WEST, and GTE are many times higher than this standard. A cost study conducted by Bell South and reported to the Florida Public Service Commission indicates that the true cost of providing directory assistance is a fraction of what the above BOCs currently charge for their listings, even to directory assistance providers that all parties agree are telecommunication carriers.

Southwestern Bell, in addition to Bell Atlantic, refuses to negotiate rates consistent with the Act with Metro One because they claim that Metro One does not meet their definition of a telecommunications carrier. Currently, unless Metro One is considered a telecommunications carrier by the BOC or a corresponding state PUC, it has no recourse, such as arbitration, against a BOC that refuses to provide its listing to Metro One under the terms and conditions of the Act.

IV. Comments, Par 42. We ask commenters to discuss whether the Commission's rules, which previously distinguished between basic and enhanced services, should now distinguish between telecommunications and information

services. For example, we ask whether the Commission's *Computer II* decision should now be interpreted to require facilities-based common carriers that provide information services to unbundle their telecommunications services and offer such services to other ISPs under the same tariffed terms and conditions under which they provide such services to their own information services operations.

For some of the same reasons the Commission rules currently differentiate between basic and enhanced service, the Commission's rules should now distinguish between telecommunications and information services, at least as they apply to the BOCs. The Commission is correct when they state in Par. 43 of this NPRM that, "For example, BOCs may discriminate against competing ISPs by denying them access to services and facilities or by providing ISPs with access to services and facilities that is inferior to that provided to the BOC's own information services operations. BOCs also may allocate costs improperly by shifting costs they incur in providing information services, which are not regulated under Title II of the Act, to their basic services." It is not a case that the BOCs "may" discriminate against competing ISPs, some already are.

An example of this is Bell Atlantic's behavior in refusing to provide batch access via magnetic tape to competitors, but instead is restricting them to on-line access to their directory assistance database.

For the old Bell Atlantic territory, Bell Atlantic has refused for more than a year to provide Metro One batch access to their directory assistance database. Furthermore, they have advised Metro One that the only access they will ever be able to obtain is on-line access but have still not made even that access available nor disclosed what the price will be when it is available.

Because of the time delay, the inflexibility of the search parameters and the inability to enhance the data, this service is significantly inferior to the service that Bell Atlantic provides to its own information service operations.

In addition to providing discriminatory access to their directory assistance listings, the BOCs charge rates many times higher than the costs of providing the service. The Act clearly defines what prices should be charged for unbundled network elements. The FTA is equally clear in stating that directory assistance listings are an unbundled network element. Section 252(d)(1) states that, "... the just and reasonable rates for network elements for purposes of subsection (c)(3) of such section --(A) shall be- (i) based on the costs (determined without reference to a rate-of-return or other rate based proceeding) of providing the interconnection or network element (whichever is applicable), and (ii) nondiscriminatory, and (B) may include a reasonable profit. This pricing standard was subsequently affirmed in the ruling of the United States Court of Appeals for the Eighth Circuit.

Metro One believes that the rates charged by Southwestern Bell, Pacific Bell, GTE and U S WEST for batch access to their directory assistance listings are significantly higher than provided for in the Act. These rates range from \$0.02 per listing and update and \$0.05 per use for Pacific Bell to \$0.0585 per listing and update for Southwestern Bell. In the only cost study which Metro One is aware of that has addressed the cost of providing directory assistance listings, Bell South provided information to the Florida Public Service Commission that the cost to produce the base file of directory assistance listing in batch magnetic tape format was \$0.001 per listing and the cost to provide updates was \$11.81 per month per central office.

The Commission is correct in its statement in Par. 49 that the "BOCs are unable to engage successfully in discrimination and cost misallocation to the extent that competing ISP's have alternate sources of access to basic services." The Commission is equally correct in its statement in Par. 51 that "We recognize that the BOCs remain the dominant providers of local exchange services in their in-region states, and thus continue to have the ability and incentive to engage in anti-competitive behavior against competing ISPs." Unfortunately the BOC is the only source of a reasonably complete and accurate directory assistance listing database. Certain BOCs are engaging in anti-competitive behavior in refusing to make their directory assistance listings available to competitive directory assistance providers consistent with the terms and conditions of the Act. The terms and conditions under which these BOCs are offering to provide access to their directory assistance listings are certainly less favorable than they are offering their own directory assistance operations.

Metro One believes that some BOCs are deliberately stalling in cooperating with competitive information services providers, despite the clear language of the Telecom Act, subsequent orders of the Commission and the decision of Eighth Circuit concerning the terms and conditions under which they must provide their directory assistance listings. Metro One believes the BOCs are doing this in order to deny the competitive directory assistance providers fair opportunity to become established in the market prior to the time the BOCs themselves are allowed to enter the enhanced information service markets, either on Feb 8, 2000, under terms of the Act or until the Commission (in proceeding such as this) or Congress, change the rules for their entry.

V. Par. 96. The Commission seeks comment on whether it is in the public interest for the Commission to extend section 251-type unbundling to pure ISPs. Put differently, we seek comment regarding whether, pursuant to our general rulemaking authority contained in sections 201-205 of the Act, and as exercised in the *Computer III*, *ONA*, and *Expanded Interconnection* proceedings, we can and should extend some or all rights accorded by Section 251 to requesting telecommunications carriers to pure ISPs.

Metro One believes it is in the public interest for the Commission to extend 251-type unbundling to at least some ISPs, but certainly to those that are competitive directory assistance providers. Providers of commercial directory assistance listing databases are, at best only 60 80% accurate at any moment in time. Requests for directory assistance often involve new or recently changed telephone numbers, not yet familiar to the requester. Metro One also believes that because of the inconsistent interpretations of section 251 by the BOCs and state public utility commissions and the resulting discriminatory treatment of competitive directory assistance providers by some of the BOCs, the Commission is obligated to extend section 251-type unbundling to at least this classification of information service providers.

VI. Par. 96. Commenters who contend that it is in the public interest to extend 251-type unbundling should address why it is necessary to do so, given the alternative options pure ISPs have to obtain benefits of section 251 unbundling, as well as the unbundling rights ISPs currently enjoy under the Commission's existing ONA regimes.

Metro One does not agree with the Commission that pure ISPs in general, and directory assistance providers specifically, have many realistic alternative options, if any, to obtain the benefits of sections 251 unbundling. The BOCs are very creative in finding ways to stall or making certain that their unbundled network element of directory assistance listing does not become available to competitive directory assistance providers.

Furthermore, Metro One believes that based on the actions of certain BOCs and the reluctance of certain state PUCs to act, without some assistance from the FCC such as that contemplated by this proceeding, competitive directory assistance providers will likely never obtain the benefits of section 251 unbundling.

Metro One believes that it is necessary to extend section 251-type unbundling rights at least to competitive directory assistance providers. Generally, competitive directory assistance providers offer services that potentially are, or will be, in direct competition with the present and future directory assistance operations of the BOCs. Most BOCs have demonstrated their intent to provide their own competitive directory assistance service, when they are given the go ahead to do so, by entering their markets now with services such as call completion, reverse search and national directory assistance. However, given the chance to get established, competitive directory assistance providers will bring to the directory assistance market, better, more innovative and more useful services, more cost effectively, than the BOCs. At a minimum, competition will speed up the introduction of enhanced information services. However, to be able to get established, it is critical that the competitive providers are able to acquire the directory assistance listings of the BOCs in batch format and at the costs provided for in the Act.

VII. Par. 96. Commenters should also address whether the extension of section 251-type unbundling to pure ISPs would be inconsistent with section 251, which by its terms applies only to telecommunications carriers.

It is clear that directory assistance listings are unbundled network elements as defined by the Act and a key ingredient in the provision of telecommunications service. The United States Court of Appeals for Eighth Circuit in, *Iowa Utilities Board v. FCC*,

No. 96-3321 Opinion (8th Cir. July 18, 1997), agreed with the FCC that directory assistance listings are unbundled network elements:

“We believe that operator services and directory assistance qualify as features, functions, or capabilities that are provided by facilities and equipment that are used in the provision of telecommunications services. The commercial offering of phone services to the public and the specific transmission of phone calls between locations implicates the use of operator services and directory assistance.” (emphasis added)

Allowing enhanced directory assistance providers 251-type unbundling is consistent with the Act. Not allowing section 251-type access to directory assistance providers is inconsistent with the intent and spirit of the act and subsequent orders of the Commission.

The Commission itself, in the Second Report and Order, Section III, (A)(3) Paragraph 101 stated:

We conclude that the term "nondiscriminatory access" means that a BOC that provides telephone numbers, operator services, directory assistance, and/or directory listings ("providing BOC") must permit competing providers to have access to those services that is at least equal in quality to the access that the BOC provides to itself. We conclude that "nondiscriminatory access," as used in section 251(b)(3), encompasses both: (1) nondiscrimination between and among carriers in rates, terms and conditions of access; and (2) the ability of competing providers to obtain access that is at least equal in quality to that of the providing BOC. BOCs owe the duty to permit nondiscriminatory access to competing providers of telephone exchange service and to providers of telephone toll service, as the plain language of the statute requires. Such competing providers may include, for example, other BOCs, small business entities entering the market as resellers, or CMRS providers. (Emphasis added)

Metro One is a telecommunications carrier as defined by the Act, has its own CIC Code and is certified as a telecommunications carrier in the state of Oregon. Some

BOCs treat Metro One as a telecommunication carrier and provide access to their directory assistance databases under terms and conditions consistent with section 251. However, other BOCs, including Bell Atlantic and Southwestern Bell, refuse to treat Metro One as a telecommunications carrier and refuse to provide access to their directory assistance database under the terms and conditions provided for in the Act. Unfortunately, the state public utility commissions also do not agree on the definition of "telecommunications carrier" as defined in the Act. The result is that Metro One is treated as a telecommunications carrier in some states but not in others. This severely restricts Metro One's, and other competitive providers, ability to negotiate with and acquire the directory assistance listings of the BOCs and to establish a consistent national presence and strategy.

Extending section 251 to all competitive directory assistance providers would resolve the above conflict in the definition of what a telecommunications provider is. It would let Metro One and other competitive directory assistance providers better establish their business and expand considerably the number of telephone customers nationwide who will have access to a better, more informative, more timely and higher value directory assistance and other information services.

VIII. Par. 96. Commenters should address whether section 251-type unbundling is appropriate for pure ISPs, given the different purposes section 251 and ONA serve, and the different approaches to unbundling they encompass. Furthermore, commenters that argue that we should extend the section 251 unbundling framework to pure ISPs should explain what such a framework would include. For example, commenters should address, among other things, whether extending section 251-type unbundling rights to pure ISPs necessarily requires the extension to pure ISPs of any obligations under section 251 or other Title II provisions. Commenters should also address

whether extending section 251-type unbundling to pure ISPs obviates the need for ONA.

The major issue competitive directory assistance providers have with BOCs is acquiring the unbundled network element of directory assistance listings, in magnetic or some other suitable batch format at prices consistent with the Act. The approach provided for in the Act relative to the unbundled network element of directory assistance is new and should be considered an addition to the provisions of ONA. To the extent it conflicts with ONA, it should supersede ONA.

If section 251-type unbundling benefits are extended to enhanced directory assistance providers, any obligations under section 251 or Title II provisions, to the extent they are applicable to the situation, could be extended to the competitive ISPs.

Metro One believes that the provisions of section 251 and the remainder of the Act, properly implemented, can satisfy their needs.

IX. CONCLUSION

If Metro One is extended all section 251-type benefits including enforcement of the section 251 provisions, it is willing to agree that the BOCs could be given streamlined requirements for entering the information services markets. However, no BOC should be able to enter the information services markets until it can demonstrate that it has met all of its obligation under the Act to all information service providers impacted relevant to the market that it plans on entering. For example, if a BOC wants to be an information service provider that includes providing directory assistance service, they must be able to prove to the Commission that they are truly providing their directory assistance listings to competitive directory assistance providers under the terms and conditions provided for in

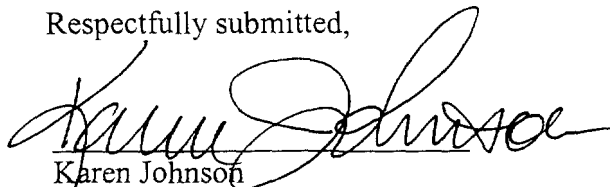
the Act, which includes providing them in batch format, if requested and at their cost, plus a reasonable profit.

Such safeguards are necessary because Metro One believes that the BOCs are currently violating section 251 and discriminating against directory assistance providers, even those that all parties agree are telecommunications carriers. They are doing this by not providing rates for directory assistance listing that are supported by legitimate cost studies that accurately reflect the costs of providing the listings.

They are also violating section 251 and other provisions of the Act by refusing to provide directory assistance listings in magnetic tape or some other suitable batch format to directory assistance providers that are clearly telecommunications carriers.

It will provide ISPs in general, and competitive directory assistance providers in particular, little advantage to be extended the rights of section 251 if they are unable to effectively exercise those rights. Certain BOCs have clearly demonstrated that they will not willingly cooperate with competitive information service providers

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Karen Johnson', is written over a horizontal line.

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